

Appl. No. 09/446,232  
Inventor: Biggs et al

generator being present at from about 2% to about 30% by weight; and

ii. a polyol aerosol generator, selected from the group consisting of glycerol, triethylene glycol, propylene glycol, polyhydric acid, an ester, a high boiling point hydrocarbon, methylene glycol, methyl citrate or a combination thereof, said polyol aerosol generator being present at from about 0% to about 24% by weight;

b. tobacco, being present at from about 0% to about 20% by weight;

c. binder, being present at from about 0% to about 20% by weight;

d. inorganic filler, being present at greater than about 30% by weight; and

e. an additive selected from the group consisting of cocoa, sugar, fibre, starch, pullulan, polysaccharide expansion agents, foaming agents, cocoa butter, olive oil, corn oil, or a combination thereof, being present at from about 0% to about 25% by weight.

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33. A smoking material according to claim 32, wherein said inorganic filler is selected from the group consisting of calcium carbonate, perlite, vermiculite, diatomaceous earth, colloidal silica, magnesium oxide, magnesium sulphate, magnesium carbonate, similar low density inorganic filler materials or a combination thereof.

34. A smoking article according to claim 32, wherein said binder is selected from the group consisting of an alginate, celluloses or modified celluloses, starches or modified starches, natural gums, or a combination thereof.

#### REMARKS

Claims 1 – 19 and 21 – 34 remain in the application. Claims 1 and 2 have been amended. Claims 31 – 34 have been added to the application.

Independent claims 1 and 31 specify that the aerosol generator comprises a non-polyol aerosol generator and a polyol aerosol generator and have their basis at page 2, lines 1 – 8. Claim 2 depends from claim 1, and has its basis in the examples provided in the specification. Claims 32 – 34 specify that the smoking material consists essentially of an aerosol generator, tobacco, binder, inorganic filler and additives, at specified concentrations.

#### ARGUMENTS

##### The Present Development

The present development relates to a smoking material which includes a non-polyol aerosol generator used in combination with a binder and an inorganic filler.

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Optionally, a polyol aerosol generator, tobacco or a combination thereof may be included in the smoking material.

Claims Rejected Under 35 U.S.C. §102 and §103

⑤ The Examiner has rejected claims 1 – 15 as being unpatentable under 35 U.S.C. §103(a) in view of U.S. Patent 3,878,850, issued to Gibson et al. Claims 16 – 17 have been rejected as being unpatentable under 35 U.S.C. §103(a) in view of U.S. Patent 3,878,850, issued to Gibson et al. Claims 18 and 21 – 24 have been rejected as being unpatentable under 35 U.S.C. §103(a) in view of U.S. Patent 3,878,850, issued to Gibson et al, in view of U.S. Patents 5,379789 and 4,986,287, issued to Schneider et al. Claims 25 – 27 have been rejected as being unpatentable under 35 U.S.C. §103(a) in view of U.S. Patent 3,878,850, issued to Gibson et al, in view of U.S. Patents 5,379789 and 4,986,287, issued to Schneider et al, and further in view of U.S. Patent 5,056,537, issued to Brown et al.

The '850 patent teaches a smoking material made from modified carbohydrates and fortified with nicotine. The smoking material further includes an aerosol generator, binder and inorganic filler material. As taught through the examples, the aerosol generator includes from about 5.5% to about 8.5% by weight glycerol, a polyol material. The aerosol generator may further include organic acids, neutral substances which pyrolyze to produce acidic matter, or a salt of a weak nitrogenous base with a strong acid.

In amended independent claims 1 and 31, the present invention requires that the smoking material include a non-polyol aerosol generator and that the non-polyol aerosol generator be present in the smoking material at from about 6% to about 30% by weight. There is no requirement for the inclusion of a polyol aerosol generator in order for the material to function as intended. The '850 patent does not teach or suggest that the smoking material can be prepared without a polyol aerosol generator. Thus, independent claims 1 and 31 and the claims 2 – 18 which depend from them are not felt to be obvious based on of U.S. Patent 3,878,850, issued to Gibson et al. The applicant's attorney respectfully requests the examiner to remove these rejections.

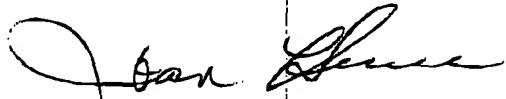
Claims 21 – 27 of the present application are directed at using the smoking material in a smoking article. The Examiner states that it would obvious to a person of ordinary skill in the art to have used the '850 patent smoking material within a smoking article arrangement as disclosed in the '789 patent and the '287 patent. However, as the Examiner further notes, such combination is not taught or suggested by the '850 patent. Further, as noted above, the smoking material of the present application is believed to be distinguishable from the smoking material of the '850 patent, and therefore, even if the material of the '850 patent could be used in the smoking article of the '789 or '287 patent, there is no teaching or suggestion within any of the cited prior art that the smoking material of the present invention would also function in that '789 or '287 smoking articles. Further, the addition of polyhydric alcohol as taught in the '537 patent does not affect the lack of teachings or suggestions for combining the smoking materials in the '850 patent, '789 patent, and '287 patent. The applicant's attorney respectfully requests the examiner to remove these rejections.

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Claims 1 and 2 have been amended as follows:

1. (twice amended) A smoking material comprising a non-polyol aerosol generator, selected from the group consisting of triethylene glycol diacetate, glycerol triacetate, glycerol diacetate or a combination thereof, up to 20% by weight tobacco, binder at not more than 20% by weight and not less than 30% by weight inorganic filler.
2. (twice amended) A smoking material according to Claim 1, wherein said non-polyol aerosol generator is present at about 6% or more by weight.

Claims 31 – 34 have been added:

31. A smoking material comprising a non-polyol aerosol generator, the total amount of aerosol generator being about 30% or less, no tobacco, up to 20% by weight tobacco, binder at less not more than 20% 10% by weight and not less than 30% by weight inorganic filler.
32. A smoking material consisting essentially of:
  - a. an aerosol generator, being present at from about 2% to about 30% by weight, said aerosol generator comprising:
    - i. a non-polyol aerosol generator, selected from the group consisting of triethylene glycol diacetate, glycerol triacetate, glycerol diacetate or a combination thereof, said non-polyol aerosol generator being present at from about 2% to about 30% by weight; and
    - ii. a polyol aerosol generator, selected from the group consisting of glycerol, triethylene glycol, propylene glycol, polyhydric acid, an ester, a high boiling point hydrocarbon, methylene glycol, methyl citrate or a combination thereof, said polyol aerosol generator being present at from about 0% to about 24% by weight;
  - b. tobacco, being present at from about 0% to about 20% by weight;
  - c. binder, being present at from about 0% to about 20% by weight;
  - d. inorganic filler, being present at greater than about 30% by weight; and
  - e. an additive selected from the group consisting of cocoa, sugar, fibre, starch, pullulan, polysaccharide expansion agents, foaming agents, cocoa butter, olive oil, corn oil, or a combination thereof, being present at from about 0% to about 25% by weight.
33. A smoking material according to claim 32, wherein said inorganic filler is selected from the group consisting of calcium carbonate, perlite, vermiculite,

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diatomaceous earth, colloidal silica, magnesium oxide, magnesium sulphate, magnesium carbonate, similar low density inorganic filler materials or a combination thereof.

34. A smoking article according to claim 32, wherein said binder is selected from the group consisting of an alginate, celluloses or modified celluloses, starches or modified starches, natural gums, or a combination thereof.